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TO: **Economic Support Supervisors  
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W-2 Agencies**

FROM: Amy Mendel-Clemens  
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**BHCE/BWP OPERATIONS MEMO**

No.: 03-66

Date: 10/29/2003

Non W-2  W-2  CC

PRIORITY: HIGH

SUBJECT: **NEW APPEAL PROCESS FOR CHILD CARE PARTICIPANTS  
AND PROVIDERS**

**CROSS REFERENCE:** Day Care Manual, Chapter 1, section 10.5.0  
BPS Operations Memo 02-16

**EFFECTIVE DATE:** NOVEMBER 24, 2003

**PURPOSE**

This memo provides information on the new appeal process for Child Care participants and providers. The new appeal process will replace the Fact Finding process for Child Care participants and the local agency appeal process for Child Care providers.

**BACKGROUND**

**Child Care Participants**

Section 49.152 Wis. Stat. provides for a dispute resolution process for Child Care applicants (participants) to request a review of a local agency's action. The process consists of two levels of review. First a Fact Finding is conducted by the W-2 agency. If the participant was not satisfied with the Fact Finding decision, the second step would be to request a departmental review (known as the Fair Hearing process), which is conducted by the Division of Hearings and Appeals (DHA) in the Department of Administration.

There continues to be confusion over the appropriate appeal process when a participant appeals a Child Care determination. Due to this confusion, it has been decided that all Child Care participants will have their appeals decided at the "second level review" stage known as the Fair Hearing.

### **Child Care Providers**

Previous to an administrative rule change that became effective February 2003, there was no authority in current Child Care related statutes or administrative rules that expressly provides a departmental review (Fair Hearing process through DHA) for Child Care providers. Prior to February 2003, Child Care policy defined the first step of the dispute resolution as the county/tribe conducting an impartial review of the action taken and issuing a written decision. Further levels of appeals were made available to Child Care providers who disagreed with the review decision. It was local agency discretion to define the other levels of appeal.

Due to the increased authority in administrative rule DWD 56 to monitor Child Care providers and take negative actions against providers when the provider is out of compliance, an appeal process was made available to the Child Care provider that is consistent statewide. Effective February 2003, administrative rule DWD 56 allows providers to appeal through a Fair Hearing. The Fair Hearing process will be conducted by DHA.

## ***POLICY***

### **Child Care Participants**

The appeal process for Child Care participants will be a Fair Hearing effective November 24, 2003. The Fair Hearing will be conducted by DHA. The participant must submit a written request for a Fair Hearing of a Child Care decision to DHA. That request must be received by DHA within 45 days after the date of the notice or the effective date of the decision announced in the notice, whichever is later. This request must be separate from any Fair Hearing requested for Medical Assistance or Food Stamp benefits.

### **Child Care Providers**

Child Care provider appeal rights have been added to the administrative rule DWD 56 and became effective February 1, 2003. The rule allows a Child Care provider to request a Fair Hearing for any of the following actions:

- Refusal to issue new Child Care authorizations or the revocation (ending) of existing Child Care authorizations for one of the following reasons:
  - false attendance reporting,
  - refusal to provide attendance documentation,
  - submission of false provider prices , or
  - not correcting a violation relating to regulation timely
- Refusal to issue payment to a provider
- Determination of the provider's issuance amount (this does not include the authorization amount)
- Collection of an overpayment

There are limits to the appeal rights under the collection of an overpayment. A Child Care provider can appeal the:

- Determination of the overpayment amount (at the time of the overpayment determination and/or during the collection process)
- Determination of the overpayment amount still owed during the collection process
- Decision to recover overpayment by means of certification to the Wisconsin Department of Revenue (recoupment from Wisconsin income tax returns)

The Child Care provider may make only **one request** for appeal of the basis for an overpayment claim. Any subsequent appeals must be limited to questions of prior payment of debt that the agency or DWD is proceeding against or mistaken identity of the debtor.

The written request for the Fair Hearing must be received by DHA within 30 days from the date on the notice or the effective date of the decision announced in the notice, whichever is later. The request for Fair Hearing must either be made by the Child Care provider or someone with legal authority to act on their behalf.

#### TRANSITION FROM THE FACT FINDING TO FAIR HEARING PROCESS

Effective November 24, 2003, any Child Care participant who requests an appeal should be referred to the Fair Hearing process, regardless if the notice indicates that the appeal process is a Fact Finding.

The DHA reviewer will read a short statement to those participants who receive a Fair Hearing but whose notice indicated that the appeal process for Child Care was a Fact Finding. The statement will explain that during the transition period from the Fact Finding to the Fair Hearing appeal process some cases, such as this one, will be handled with the "new" Fair Hearing process. Both processes are intended to allow the participant to state his or her argument and present evidence on the issue to be decided.

All Fact Findings that had been scheduled prior to November 24, 2003 will continue to be held, even when the date of the Fact Finding is scheduled for on or after November 24<sup>th</sup>.

#### **CARES NOTICES**

New language will be added to the rights and responsibility sections that describe the Fair Hearing appeal process for Child Care participants and providers. The new language will be added to notice of decisions, Child Care authorization notices, overpayment notices, and benefit recovery notices. The new language regarding the Fair Hearing process will be added to the notices effective November 24, 2003.

CARES does not generate notices when a local agency has made the decision to refuse to issue new Child Care authorizations or to refuse to issue payment to a provider. The local Child Care agency is responsible for issuing written notice to the provider under these circumstances and those notices must include information regarding the provider's right to appeal through a Fair Hearing. The local agency must retain a copy of the notice for these decisions in the provider's file.

ADDRESS TO SEND REQUEST FOR FAIR HEARING

Both Child Care participants and providers must send the written request for a Fair Hearing to:  
Division of Hearings and Appeals  
P.O. Box 7875  
Madison WI 53707-7875

COUNTY REPRESENTATION AT THE FAIR HEARING

The DHA Fair Hearings for both Child Care participants and providers will be held at the county/tribal agency or another building chosen by DHA. DHA will inform the county agency of the appeal request and the date, time and location of the Fair Hearing. The county agency will be responsible for ensuring that there is local agency representation at each Fair Hearing.

- If the decision under dispute was made by the county agency, the county must be represented and prepared to show documentation (policy, statute, administrative rule, CARES screens and notices, etc.) of why the decision was made.
- If the decision under dispute was made by a W-2 agency, the county agency is responsible for either:
  1. Coordinating with the W-2 agency to ensure that the W-2 agency will have a representative at the review.
  2. Coordinate with the W-2 agency in gathering the information and documentation necessary in order for the county to present the decision made by the W-2 agency.

Failure of the county to provide representation at the DHA Fair Hearing may result in the Child Care participant or provider winning their appeal, even when the decision made by the agency had merit. The DHA may subpoena county workers as a means of ensuring their attendance.

Failure of the Child Care participant or provider to appear without good cause will result in DHA considering the request for appeal to be abandoned and the request will be dismissed.

DOCUMENTATION PREPARATION

As stated in the section above, counties must come to the DHA Fair Hearing prepared with documentation supporting the decision that was made. It is important to come prepared with appropriate documentation so that the DHA reviewer will have adequate information in order to make an informed decision. The documentation may include, but is not limited to, the following:

- The policy supporting the reason for the decision. Policy can be from the Day Care Manual, BWP/BIMA Operations Memos, administrative rule, state statute, etc.
- The documentation about the case or provider that shows that the policy applies in this instance. This documentation can include:
  1. CARES screens showing the participant budget calculation
  2. CARES screens showing the authorization or issuance calculation
  3. CARES screens showing the issuance amount
  4. Various other CARES screens
  5. Case comments

6. Documentation from fraud investigations
  7. Any other documentation the agency believes is relevant to the situation
- Documentation that the action taken was communicated with appropriate notice. This includes notices and letters that are either CARES generated or issued manually by the local agency.

### PUBLIC ASSISTANCE COLLECTION UNIT

The Public Assistance Collection Unit (PACU) currently prepares a packet of information for most counties to support the calculation and collection of an overpayment for Fair Hearings held by DHA. The PACU will continue to do so for the Child Care participant and provider overpayment disputes that receive a Fair Hearing.

The PACU will also continue to review and monitor each of the Fair Hearing decisions, to ensure compliance and indicate potential areas of concern to the Child Care program area.

### **CONTACTS**

BHCE CARES Information & Problem Resolution Center

Email: [carpolcc@dhfs.state.wi.us](mailto:carpolcc@dhfs.state.wi.us)  
Telephone: (608) 261-6317 (Option #1)  
Fax: (608) 267-2269

Note: Email contacts are preferred. Thank you.

DWD/DWS/BDS/RB